

INSTRUCTIONS FOR COMPLETING THE COMMONWEALTH OF PENNSYLVANIA'S TOBACCO PRODUCT MANUFACTURER CERTIFICATION FORM

GENERAL INFORMATION

Who is required to file this Certification?

- (1) Every tobacco product manufacturer whose cigarettes are being sold in the Commonwealth, whether directly or through any distributor, retailer, or similar intermediary.
- (2) Every tobacco product manufacturer that wants to have its cigarettes sold in the Commonwealth.

Due to current Pennsylvania tax statutes, Roll-Your-Own (RYO) Tobacco Manufacturers are not required to file a certification at this time.

How is this certification used?

The Office of Attorney General uses the information provided in the certification to determine whether a tobacco product manufacturer's brand(s) should be included in the directory published pursuant to section 301 of the Tobacco Product Manufacturer Directory Act. If a cigarette brand is not listed in the directory, it cannot be sold in Pennsylvania.

Who should sign the certification?

The certification must be reviewed and signed by a director or officer of the Tobacco Product Manufacturer (TPM) with the authority to bind the company.

When is a supplemental certification required?

A manufacturer that wants to add a brand family to its certification must file a supplemental certification.

A Non-Participating Manufacturer whose products have not previously been sold in the Commonwealth must file quarterly certifications during the first year of sales.

A manufacturer must also file a supplemental certification when there is a change to any of the following:

- Contact information
- Address
- Plant Address
- Company organization/ownership

- Escrow information
- Registered agent
- Deletion of brands

When is this certificate due?

Initial Certification

New tobacco product manufacturers who intend to sell cigarettes into Pennsylvania must file a certification and be included in the directory **prior** to any sales in the Commonwealth.

Annual Certification

Manufacturers whose cigarettes have been sold in the previous year in the Commonwealth must submit an annual certification by April 30th.

Supplemental Certification

A Non-Participating Manufacturer whose products have not previously been sold in the Commonwealth must file supplemental certifications for the first twelve months of sales in Pennsylvania. The certification for sales in the first calendar quarter are due May 15th, the certification for sales in the second calendar quarter are due August 15th, the certification for sales in the third calendar quarter are due November 15th, and the certification for sales in the fourth calendar quarter are due February 15th of the following year.

When must I make my escrow payment?

Non-Participating Manufacturers whose products have previously been sold in the Commonwealth must deposit all required escrow payments into a qualified escrow account annually **on or before April 15th** of each year.

New Non-Participating Manufacturers must make quarterly deposits as set forth below.

Who needs to make quarterly escrow payments?

A Non-Participating Manufacturer whose products have not previously been sold in the Commonwealth must make quarterly payments for the first twelve months of sales in Pennsylvania. The deposit for sales in the first calendar quarter are due May 15th, the deposit for sales in the second calendar quarter are due August 15th, the deposit for sales in the third calendar quarter are due November 15th, and the deposit for sales in the fourth calendar quarter are due February 15th of the following year.

Definitions:

- (a) “Brand Family” - all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, cigarettes labeled “menthol,” “lights,” “kings,” and “100s,” and any cigarettes sold under a brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of

product identification, that are identical to, similar to or identifiable with a previously known brand of cigarettes.

- (b) “Cigarette” - any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper, or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette. (3) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in paragraph (1).
- (c) “Non-Participating Manufacturer” - a tobacco product manufacturer that is not a party to the Master Settlement Agreement (MSA).
- (d) “Participating Manufacturer” - a tobacco product manufacturer that is a party to the Master Settlement Agreement (MSA).
- (e) “Qualified Escrow Fund” - an escrow arrangement with a federally or State chartered financial institution that has no affiliation with any tobacco product manufacturer and has assets of at least \$1,000,000,000 in which the escrow arrangement:
 - (1) requires that the financial institution hold the principal of the escrowed funds for the benefit of the releasing parties as that term is defined in the Master Settlement Agreement;
 - and
 - (2) prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the principal of the funds except as consistent with section 4 of the act of June 22, 2000 (35 P.S. § 5674), known as the Tobacco Settlement Agreement Act.

A model escrow agreement can be found on our website at www.attorneygeneral.gov , specifically at www.attorneygeneral.gov/ppd/tobacco/pdf/Multi-StateEscrowAgreement.pdf .

- (f) “Units Sold” means the number of individual cigarettes sold in this Commonwealth by the applicable tobacco product manufacturer during the year in question, as measured by taxes collected by the Commonwealth on packs, bearing the tax stamp on the Commonwealth required under section 1215 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971.

SPECIFIC INSTRUCTIONS

Fill out the form completely. Do not leave any fields blank. Indicate N/A when applicable.

Part 1: Tobacco Product Manufacturer's Identification

Identify the company name, mailing, physical and web addresses. Provide the telephone, fax number and the electronic mail address for the company official signing this certification. Identify the manager of the plant where the cigarettes are made.

Provide documents that verify your information such as Articles of Incorporation, Corporate Charters, Corporate bylaws, Operating Agreements and contracts or leases, etc.

You must indicate whether this is an initial, annual, or supplemental certification by checking one of the blocks.

Part 2: Brand Family Identification

Section A is to be completed only by Tobacco Product Manufacturers that have joined the Master Settlement Agreement.

Identify by Brand Family all of the cigarettes that you intend to sell in this Commonwealth whether directly or through any distributor, retailer, or similar intermediary.

Do not include a Brand Family in the list unless the cigarettes are to be considered yours for purposes of calculating your payments under the Master Settlement Agreement (MSA). You need to have reported sales of those brands to the Independent Auditor for the relevant year, in the volume and shares as determined under the MSA.

Section B is to be completed only by Non-Participating Manufacturers (companies that have not joined the Master Settlement Agreement).

Provide sample packages (remove cigarettes) or color photos showing all sides of the pack for the brand families identified. One package is sufficient for each brand family. Submit new packages or color photos each time you change your packaging.

If you are NOT the US Trademark Holder of all brand families listed, provide the name, address and telephone number of the trademark holder on a separate sheet of paper. Also include an acknowledgement that you have been given the right to use the trademark.

Identify by Brand Family all of the following:

- (i) Your Brand Families and the number of Units Sold of each Brand Family that were sold in the Commonwealth of Pennsylvania during the preceding calendar year (indicate sales year);
- (ii) Your Brand Families that have been sold in the Commonwealth at any time during the current calendar year, and the units sold during the most recent calendar quarter;

- (iii) Your Brand Families sold in the Commonwealth during the preceding calendar year that are no longer being sold as of the date of this Certification (identify by an asterisk); and
- (iv) The complete name and address of every other tobacco product manufacturer that has manufactured a Brand Family described in (i), (ii) or (iii) of this subsection in the preceding or current calendar year.

Section C is to be completed by both Participating and Non-Participating Manufacturers.

Identify by Brand Family any additional brands, not currently on the directory, that you want added.

Provide documents to verify the information contained in Sections B & C such as BATF Form 7501s, bills of lading, Tobacco Tax Bureau permits, FTC rotation plans, ingredient report listings, trademark certifications, importers certificates, customer invoices, licenses, agreements, contracts, etc.

Part 3: Registered Agent & Escrow Account Information (to be completed by Non-Participating Manufacturer only)

Section A

Indicate whether you are registered to do business in Pennsylvania or have appointed and continuously engaged the services of a resident agent for service of process. If an agent has been appointed, you must provide the agent's name, address and telephone number. In addition, you must provide proof of the appointment and availability of the agent.

Section B

Identify the following:

- the name, address, telephone and fax number of the financial institution and the name and title of a contact person authorized to conduct business on behalf of the financial institution;
- the account number of your Qualified Escrow Fund and the sub-account number for Pennsylvania, and
- the amount and date of deposit for the appropriate reporting period, as well as proof of the deposit verifying the amount(s).

You must certify that you have established a Qualified Escrow Fund and executed a Qualified Escrow Agreement. If not previously provided, attach a fully executed copy of the current qualified escrow agreement and any amendments or attachments.

A copy of Pennsylvania's Model Escrow Agreement form can be found at www.attorneygeneral.gov/ppd/tobacco/pdf/Multi-StateEscrowAgreement.pdf. Any variation from the model escrow agreement may cause your certification to be disapproved.

Section C

You must identify (i) the amount deposited in your Qualified Escrow Fund for all cigarettes sold in the Commonwealth, the date and amount of each deposit; and (ii) the amount and date of any withdrawal or transfer of funds the Non-Participating Manufacturer made at any time from such fund or from any other Qualified Escrow Fund. A bank statement or deposit slip which shows proof of the current balance must be submitted with this Certification.

Part 4: Execution by Corporate Officer or Director

The Tobacco Product Manufacturer must certify that it is either a) a Participating Manufacturer under the MSA or b) a Non-Participating Manufacturer in full compliance with the Tobacco Settlement Agreement Act that is registered to do business in the Commonwealth (or has appointed a resident agent for service of process), that has established and continuously maintains a qualified escrow fund, and that executed a qualified escrow agreement approved by the Attorney General.

The person executing the Tobacco Manufacturer Certification Form must be an authorized Director or Officer of the Tobacco Product Manufacturer. The designee's name and title must be printed and signed.

This certification and all other required forms must be completed in English. For all attachments, if the original is in a language other than English, a true and correct translation into English must be attached as well.

Any attachment must clearly indicate the section to which it corresponds.

Facsimiles are not acceptable. Mail the original Tobacco Manufacturer's Certification and a complete copy of all supporting documents to:

Commonwealth of Pennsylvania
Office of Attorney General
Tobacco Enforcement Section
Attn: Kenneth W. Bateman
15th Floor Strawberry Square
Harrisburg, PA 17120